

EXHIBIT F

Ralph Zipper, M.D., FACOG, FPMRS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF WEST VIRGINIA
3 CHARLESTON DIVISION

Master File No. 2:12-MD-02327

MDL No. 2327

JOSEPH R. GOODWIN U.S. DISTRICT JUDGE

4 IN RE: ETHICON, INC.

5 PELVIC REPAIR SYSTEM PRODUCTS LIABILITY
6 LITIGATION

THIS DOCUMENT RELATES TO:

7 Sharon Carpenter, et al. v. Ethicon, Inc.,
8 et al.

Civil Action No. 2:12-cv-00554

9 Joy Essman, et al. v. Ethicon, Inc., et
10 al.,

Civil Action No. 2:12-cv-00277

11 Barbara A. Hill, et al. v. Ethicon, Inc.,
12 et al.,

Civil Action No. 2:12-cv-00806

13 Brenda Riddell, et al. v. Ethicon, Inc., et
14 al.,

Civil Action No. 2:12-cv-00547

15 Barbara J. Vignos-Ware, et al. v. Ethicon,
16 Inc., et al.,

Civil Action No. 2:12-cv-00761

17 - - - - - /

18 RALPH ZIPPER, M.D., FACOG, FPMRS

19 March 20, 2016

20 - - -

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Deposition of RALPH ZIPPER, M.D.,

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FACOG, FPMRS, held at Hilton Rialto

4

Place, 200 Rialto Place, Melbourne,

5

Florida, commencing at 9:26 a.m., on the

6

above date before Rhonda Hall-Breuwet,

7

RDR, CRR, LCR, CCR, FPR, CLR, NCRA

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Realtime Systems Administrator

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1 abdominally because it's a mesh that was
2 readily available in hospitals, and
3 because of that, the likelihood is high
4 that I used it. I just can't recall.

5 Q. Okay. That's fine. And do
6 you remember -- maybe I should back up.

7 Do you remember when you
8 first used any type of polypropylene
9 mesh, be it self-tailored or in a Y
10 shape, for abdominal repair of pelvic
11 organ prolapse?

12 MR. THORNBURGH: Objection.

13 THE WITNESS: I don't recall
14 the material that we were using in
15 residency. There is certainly a
16 good chance it was polypropylene
17 mesh, which would put us into the
18 mid to late 1990s. 1994, '95,
19 '96.

20 BY MR. TOMASELLI:

21 Q. Okay. Do you still use
22 polypropylene mesh today for abdominal
23 repair of pelvic organ prolapse?

24 MR. THORNBURGH: Objection.

1 THE WITNESS: I do.

2 BY MR. TOMASELLI:

3 Q. All right. And my
4 understanding is that you use a product
5 called Alyte Y?

6 A. Yes.

7 Q. Are there other products
8 that are manufactured for the use of
9 abdominal repair of pelvic organ
10 prolapse?

11 MR. THORNBURGH: Objection.

12 BY MR. TOMASELLI:

13 Q. Maybe that was a terrible
14 question. Let me try again. Withdrawn.

15 Alyte Y is a mesh that's
16 manufactured for use in abdominal repair
17 of pelvic organ prolapse; is that
18 correct?

19 A. Yes.

20 Q. Are there other mesh --
21 polypropylene meshes that you have used
22 other than Alyte Y for the abdominal
23 repair of pelvic organ prolapse?

24 A. Yes, but I couldn't tell you

1 Q. Okay. By the mid-2000s, do
2 you know if this group of expert
3 gynecologists stopped using mesh via the
4 transvaginal route?

5 MR. THORNBURGH: Objection.

6 THE WITNESS: You're talking
7 about the self-tailored mesh or
8 are you talking about kits with
9 arms?

10 BY MR. TOMASELLI:

11 Q. I guess I'm just talking
12 about your statement here that in the
13 late 1990s, the -- this expert group
14 began to use transvaginal mesh. And my
15 question was, do you know when they
16 stopped?

17 A. No.

18 Q. I think you wrote -- and I
19 don't remember where -- but I believe you
20 stated that the highest level of
21 scientific evidence is the randomized
22 clinical trial; is that right?

23 A. No. I've stated the highest
24 level of evidence is the meta-analysis of

1 multiple randomized control trials.

2 Q. Okay. Fair enough.

3 So below a systematic review
4 or meta-analysis of a group of randomized
5 trials, below that would be the single
6 randomized trial?

7 MR. THORNBURGH: Objection.

8 THE WITNESS: Yes.

9 Are we on Prolift right now?

10 BY MR. TOMASELLI:

11 Q. Yes.

12 A. Okay.

13 (Exhibit Number 11, Article
14 Titled "Vaginal repair with mesh
15 versus colporrhaphy for prolapse:
16 a randomised controlled trial," by
17 Carey, et al., was marked for
18 identification.)

19 BY MR. TOMASELLI:

20 Q. Doctor, I'm handing you what
21 I've marked as Deposition Exhibit
22 Number 11, and is that a --

23 A. This is Prosima, I believe,
24 sir.

1 MR. THORNBURGH: This is
2 Dr. Carey.

3 THE WITNESS: Prosima.
4 That's okay. I just asked you if
5 it was Prolift and you said yes.
6 But I know there's a lot of
7 information today. Okay. Let's
8 talk about this.

9 This is a paper accepted in
10 2009 and published in 2009 by
11 Dr. Carey, the inventor of the
12 Prosima procedure, by Dr. Carey,
13 who received a million dollars for
14 signing over a license of the
15 Prosima intellectual property to
16 Ethicon, and who had a deal for, I
17 believe, 2-1/2 percent of
18 downstream revenues worth up to
19 \$6 million a year based on
20 Ethicon's projections.

21 And this is a randomized
22 controlled trial of which
23 Dr. Carey is the principal author,
24 the lead author, published in

1 2009, comparing, I believe,
2 combined anterior and posterior
3 Prosima to combined native tissue
4 anterior and posterior repair.

5 BY MR. TOMASELLI:

6 Q. This Deposition Exhibit
7 Number 11 --

8 MR. THORNBURGH: Does that
9 answer your question?

10 BY MR. TOMASELLI:

11 Q. Is Deposition Exhibit
12 Number 11 a randomized trial published by
13 Dr. Carey in 2009?

14 MR. THORNBURGH: Objection.

15 THE WITNESS: Yes. It's a
16 randomized controlled trial. The
17 control group was a native tissue
18 plication. The experimental group
19 was anterior and posterior Prosima
20 combined with native tissue.

21 BY MR. TOMASELLI:

22 Q. Okay. I thought that this
23 mesh that was used in Carey 2009 was
24 Gynemesh PS.

1 A. It is Gynemesh PS, as you
2 pointed out earlier, and I responded. I
3 said the same defective mesh which
4 Ethicon has demonstrated in its numerous
5 animal studies to be defective, which
6 subsequent investigators such as Liang
7 and Feola have further validated to be
8 defective compared to alternative meshes,
9 exist in both the Prosima and the
10 Prolift, with the key difference that in
11 the Prolift, it gets dragged through
12 muscle bodies, encouraging extrapelvic
13 complications and worsening complications
14 through inflammation and infection and
15 contraction in the muscle bodies with
16 associated degradation.

17 This here is a study using
18 the Prosima device composed of Gynemesh
19 PS with the Carey method, licensed by
20 Dr. Carey to Ethicon for a million
21 dollars, and a potential for six-plus
22 million dollars in downstream revenue
23 every year based on Ethicon projections,
24 and biased. As you asked me earlier, did

1 I feel that the owner of a patent could
2 in an unbiased way evaluate a study on
3 their IP, and I said no, and here is
4 Dr. Carey.

5 Q. Was this study
6 peer-reviewed?

7 A. I believe the British
8 Journal of Obstetrics and Gynaecology is
9 peer-reviewed. I do recall that there
10 was a problem -- no, it was the study
11 before that was at first rejected.

12 I believe this was the study
13 where Dr. Carey was unable to show any
14 significant benefit of Prosima compared
15 to native tissue surgery, and also found
16 either a 16 or 17 percent incidence of de
17 novo dyspareunia associated with Prosima,
18 although he did find a mesh extrusion
19 rate which was lower than Prolift.

20 Q. Dr. Zipper, I'm going to
21 take you through some of that data. If
22 you can just maybe concentrate on my
23 simple question every now and again, I
24 certainly would hugely appreciate it.

1 A. I will certainly do my best
2 to apply Occam's razor whenever possible.
3 However, these are not -- even though the
4 questions may appear simple, the answers
5 are not simple.

6 Q. Okay. I thought my simple
7 question was, is this paper or was it
8 peer-reviewed.

9 A. And I answered it. I said
10 yes.

11 Q. Okay. Were patients
12 enrolled in this study between
13 February 2003 and August 2005?

14 A. I'd have to read the study
15 to refresh my memory with regard to the
16 enrollment time frame.

17 Q. If you'd turn to the second
18 page under methods, the end of the first
19 paragraph, do you see that it states that
20 patients were enrolled from February 2003
21 to August 2005?

22 A. You said second page? Page
23 number 1381?

24 Q. Yes, sir.

1 A. And the end of the second
2 paragraph?

3 Q. End of the first paragraph
4 under "Methods."

5 A. Yes. I see that. "All
6 eligible women who agreed to participate
7 in this study and provided written
8 informed consent were enrolled
9 between . . . 2003 and August 2005."
10 Yes, I see that.

11 Q. Can you confirm that in this
12 study by Carey published in 2009 that the
13 patients were enrolled between
14 February 2003 and August 2005?

15 MR. THORNBURGH: Objection.
16 Joe, it's the same exact question
17 you just asked.

18 MR. TOMASELLI: I think the
19 answer is just simply yes.

20 MR. THORNBURGH: He said --
21 he says yes.

22 BY MR. TOMASELLI:

23 Q. Okay. So we can agree it's
24 yes?

1 MR. THORNBURGH: Well, I'm
2 not going to answer for him. I'm
3 just telling you it's the same
4 question.

5 THE WITNESS: I would say
6 the "Methods" section of this
7 paper says eligible patients were
8 enrolled between February of 2003
9 and 2005. It doesn't say when
10 they were treated.

11 BY MR. TOMASELLI:

12 Q. Okay.

13 A. But we know from Ethicon
14 internal documents that this data was
15 available well before publication.

16 Q. Dr. Zipper, if you'll turn
17 to Table 2 of the paper, which is on
18 page 1383.

19 Do you see that?

20 A. Sure.

21 Q. The top comparison in Table
22 2 is, I think, a comparison that you
23 referenced earlier which is whether there
24 was objective success proven in this

1 study comparing Gynemesh PS to native
2 tissue surgery.

3 Do you see that?

4 A. Actually, that's not what
5 this study did. That's a
6 misrepresentation of the study.

7 Q. All right.

8 A. This study compared -- sir,
9 this study compared the Prosima device in
10 the form which was -- included Gynemesh
11 PS used with an unvalidated type of
12 vaginal splint combining a semi-rigid
13 pessary with a balloon, combined with
14 native tissue surgery, to native tissue
15 surgery in a randomized controlled
16 fashion.

17 Q. Okay. In terms of the study
18 that we have in front of us by Carey --
19 published by Carey in 2009.

20 A. Hang on. I want to back up.
21 I misstated something. This study,
22 although it was on the Carey method,
23 which included a vaginal splint and a
24 balloon, for some reason the Prosima

1 vaginal splint and balloon were excluded
2 from this study.

3 So this study actually
4 randomized patients to the Prosima device
5 made of Gynemesh PS with some unique
6 features, combined with native tissue
7 plication, to native tissue plication.
8 Okay. So back to this chart.

9 Q. Okay. In terms of the
10 objective success in Table 2, do you see
11 that under the mesh portion the authors
12 report an 81 percent success rate? It's
13 just the first line, Doctor.

14 A. I understand that.

15 Yes. I'm looking at the
16 first line where it says that there is no
17 significant difference between the mesh
18 group and the no-mesh group.

19 Q. Right. And I'm -- that's
20 exactly where I intend to head, so maybe
21 we can just take it step by step. Okay,
22 Doctor?

23 Is it true that the authors
24 report an 81 percent success rate in the

1 mesh group in the first line for
2 objective success?

3 MR. THORNBURGH: Objection.

4 THE WITNESS: I'm going to
5 answer that with a yes or no,
6 which is what I think you want.

7 However --

8 BY MR. TOMASELLI:

9 Q. And then I'm going to ask
10 you about the no mesh, and then I'm going
11 to ask you about the P-value and what it
12 means. Okay?

13 A. But if we're going to look
14 at trends rather than significant values,
15 it's going to end up very, very poorly,
16 much worse for Prolift, because the
17 trends for Prosima and Prolift perform so
18 much worse. Those numbers are so much
19 worse than the Cochran data, and so I
20 suggest we stay with significant numbers
21 rather than trends, but fine.

22 Q. No, that's fine. I'm going
23 to.

24 A. All right. So --

1 Q. I promise you, Doctor.

2 That's where I'm headed.

3 A. So it shows 51 out of 63
4 women had a POP-Q stage of 0 or 1.

5 Q. Okay. And then in terms of
6 the no-mesh group, it was -- objective
7 success was measured in 40 of 61, or
8 approximately 66 percent, of the
9 patients, correct?

10 A. Yes.

11 Q. And the P-value that's
12 reported for this comparison is 0.07.

13 Do you see that, sir?

14 A. Yes.

15 Q. And P-values are the results
16 of testing to see if you can reject the
17 null hypothesis that the treatments are
18 the same, correct?

19 MR. THORNBURGH: Objection.

20 THE WITNESS: Occur by
21 chance.

22 BY MR. TOMASELLI:

23 Q. So if the P-value -- well,
24 withdrawn.

1 In medicine, it's generally
2 accepted that the P-value of .05 is the
3 cutoff for significance?

4 A. Right.

5 Q. All right. And so if a
6 P-value is greater than .05, the
7 treatments --

8 A. Are the same.

9 Q. -- are the same.

10 There's -- even though there
11 may be numerical differences, you cannot
12 say that they're actually different?

13 A. Right. So a P-value of .06
14 or .05 -- .051 is the same as a P-value
15 of .8.

16 Q. Fair enough.

17 A. They're both not
18 significant.

19 Q. Fair enough.

20 And then if we have a
21 P-value that is .049 or below, we in
22 science and medicine would say, "Okay.
23 We can" -- "we can reject the null and
24 say that those numbers are actually

1 different."

2 MR. THORNBURGH: Objection.

3 BY MR. TOMASELLI:

4 Q. Is that right?

5 MR. THORNBURGH: Objection.

6 THE WITNESS: Yes.

7 BY MR. TOMASELLI:

8 Q. Okay. And so from a medical
9 and statistical perspective here, we
10 cannot say that Gynemesh PS was superior
11 to no mesh, the no-mesh group?

12 A. Correct.

13 Q. And if you turn with me to
14 the "Discussion" section, which is one
15 page over -- do you see where in the
16 left-hand column there's a big word
17 "Discussion"?

18 A. Yes.

19 Q. All right. And the first
20 sentence of the discussion says -- the
21 authors state, "Our results failed to
22 demonstrate that vaginal repair surgery
23 augmented by mesh was significantly more
24 successful in terms of reduced recurrent

1 prolapse than traditional colporrhaphy 12
2 months following surgery."

3 Do you see that?

4 A. Yes.

5 Q. So the authors themselves
6 admit that their results are not
7 significant, right?

8 A. Yes.

9 MR. THORNBURGH: In 2009.

10 Sorry.

11 BY MR. TOMASELLI:

12 Q. In --

13 A. Yet they continued to sell
14 it.

15 Q. In terms of the discussion
16 right above the word "Discussion" on the
17 same page, do you see that there's some
18 typewritten portion of the page, again
19 just above the discussion?

20 A. Okay.

21 Q. All right. About halfway
22 down there's a -- there's a sentence that
23 starts, "De novo dyspareunia."

24 Do you see that?

1 A. Yes.

2 Q. And it reads, "De novo
3 dyspareunia was reported by five of 18
4 (27.8%) sexually active women without
5 preoperative dyspareunia in the mesh
6 group and five of 12 (41.7%) in the
7 no-mesh group at 12 months," with a
8 P-value of 0.46.

9 Do you see that?

10 A. Yes, I do.

11 Q. All right. So, again, while
12 the untrained eye might say that there
13 was less de novo dyspareunia in the mesh
14 group than in the no-mesh group, we
15 cannot say that those -- that there was
16 actually less de novo dyspareunia in the
17 mesh group because the P-value is above
18 .5 -- .05, right?

19 MR. THORNBURGH: Objection.

20 THE WITNESS: So to the
21 untrained eye, this report from an
22 author who got a million dollars
23 for this method, plus up to
24 \$6 million a year, shows that

1 there is no significance in
2 dyspareunia, even though the
3 untrained eye might think there is
4 based on the percentages reported,
5 yes.

6 BY MR. TOMASELLI:

7 Q. So in this study, this Carey
8 2009 study, you would agree that the rate
9 of de novo dyspareunia at 12 months was
10 no different between the mesh group and
11 the no-mesh group?

12 MR. THORNBURGH: Objection.

13 THE WITNESS: In this study
14 by Dr. Carey, who is substantially
15 and magnificently financially
16 biased, I would not agree with
17 your statement, but I would change
18 that statement to state that
19 Dr. Carey did not show or --
20 sorry -- Dr. Carey -- Dr. Carey's
21 study on a portion of the Prosima
22 method, a modification of the
23 Proxima method, which excluded the
24 novel vaginal splint and balloon

1 and combined the native tissue
2 surgery with the Prosima shaped
3 mesh and often sutured to the
4 sacrospinous ligament, was not --
5 did not cause significantly more
6 dyspareunia than the native tissue
7 surgery alone at 12 months.

8 BY MR. TOMASELLI:

9 Q. And I'm just trying to
10 understand how to -- you and I are
11 talking about data and data
12 interpretation in the same way. And I'm
13 just trying to make the point or see if
14 you agree that even though the number of
15 de novo dyspareunia of 28 percent in the
16 mesh group is numerically lower than the
17 de novo dyspareunia rate of 42 percent in
18 the no-mesh group, we would agree that
19 you cannot say those rates are different
20 because the resulting test is not
21 significant.

22 Is what I said correct?

23 A. I am comfortable stating
24 that the reported results are not

1 statistically significant.

2 Q. All right. So in this
3 study, the two things that we've talked
4 about so far in terms of anatomic success
5 rate and in terms of de novo dyspareunia,
6 there was no significant difference
7 between the groups?

8 MR. THORNBURGH: Objection.

9 THE WITNESS: In this study,
10 combining a modification of the
11 Prosima method, a modification
12 that was not marketed but did use
13 the Gynemesh PS, the author found
14 a almost 30 percent incidence of
15 de novo dyspareunia, which was not
16 statistically different than what
17 they found from the native tissue
18 group.

19 BY MR. TOMASELLI:

20 Q. And what they found in the
21 native tissue group was a rate of almost
22 42 percent, correct?

23 MR. THORNBURGH: Objection.

24 THE WITNESS: A rate that I

1 don't think was ever duplicated by
2 a nonfinancially incentivized
3 author.

4 BY MR. TOMASELLI:

5 Q. Is what I said correct?

6 A. What both of us said is
7 correct.

8 And as we stated earlier --
9 and I think this -- I don't want to beat
10 this horse to death because we've covered
11 it already, but when we compare
12 complications of mesh to native tissue
13 surgery, we're not comparing apples to
14 apples. So dyspareunia with mesh is very
15 different than dyspareunia with native
16 tissue surgery. One is transient and,
17 where not transient, very treatable. The
18 other is not transient, often continues
19 in perpetuity, and often impossible to
20 treat.

21 Exhibit Number 12 that you
22 have just handed me, "Vaginal Mesh For
23 Prolapse," is a study by Iglesia.

24 Q. Hold on. Hold on. Doctor,

1 this is question-and-answer session.

2 Okay? So I don't think there was a
3 question pending to the last statement.

4 But --

5 A. Am I not allowed to talk if
6 there's not a question?

7 Q. I think you're -- I think
8 the process is you're supposed to answer
9 my questions.

10 A. I'll certainly answer your
11 questions, but I don't think I'm not
12 allowed to talk.

13 Q. No, you can talk.

14 A. Okay.

15 Q. I'm certainly not
16 prohibiting that. Withdrawn.

17 (Exhibit Number 12, Article
18 Titled "Vaginal Mesh for Prolapse,
19 A Randomized Controlled Trial," by
20 Iglesia, et al., was marked for
21 identification.)

22 BY MR. TOMASELLI:

23 Q. Dr. Zipper, what I've handed
24 you as Deposition Exhibit Number 12 is a

1 study by Iglesia and others that was
2 published in 2010.

3 Do you see that?

4 A. Yes.

5 Q. Is this a randomized
6 controlled trial of Prolift versus a
7 native tissue repair?

8 A. Yes.

9 Q. Was it peer-reviewed?

10 A. Yes. I think this is the
11 study that the mesh group was -- stopped
12 enrolling prematurely because of
13 excessive complications.

14 Q. It was stopped prematurely
15 because five people had mesh exposure.

16 Do you remember that?

17 MR. THORNBURGH: Objection.

18 THE WITNESS: Actually, sir,
19 no disrespect for you, but I am a
20 surgeon who reads and reviews
21 peer-reviewed medical journals all
22 the time, and this study had a
23 predetermined stopping point if
24 the mesh extrusion rate, a type of

1 complication, exceeded 15 percent,
2 a percentage number -- not a
3 number of patients but a
4 percentage number -- they would
5 stop enrolling in that group
6 because of the excess
7 complications.

8 They exceeded that number,
9 and they stopped enrolling. So
10 they exceeded the predetermined
11 rate of mesh extrusions which they
12 felt would be inappropriate to --
13 they felt would be inappropriate
14 to continue if mesh extrusions
15 were beyond that number. They
16 exceeded that number, and they
17 stopped enrolling.

18 BY MR. TOMASELLI:

19 Q. Okay. Dr. Zipper, can you
20 turn to page 298 of that Exhibit 12.

21 A. Sure.

22 Q. Tell me when you're there.

23 A. I'm there.

24 Q. All right. You quoted a --

1 an erosion rate of 15.6 percent. Can you
2 look at the bottom right-hand column of
3 that page.

4 A. I actually said 15 percent.

5 Q. Okay. The bottom right-hand
6 column of the page, do you see where
7 there's a paragraph that starts with, "Of
8 the 32 mesh patients"?

9 A. Correct.

10 Q. And it says "five developed
11 erosions," right?

12 A. Correct.

13 Q. So when I said five, I was
14 actually trying to be completely honest
15 and truthful with you. Okay?

16 MR. THORNBURGH: Objection.

17 BY MR. TOMASELLI:

18 Q. Do you understand that?

19 MR. THORNBURGH: Objection.

20 THE WITNESS: No, I do not.

21 MR. THORNBURGH: Argumentative.

22 THE WITNESS: I don't

23 understand that, sir.

24 ///

1 BY MR. TOMASELLI:

2 Q. Okay.

3 A. I mean this predetermined
4 maximum amount of tolerable extrusions in
5 this study, according to the study
6 protocol, was not a number. It was a
7 percentage. They exceeded the
8 percentage. And interestingly enough,
9 this percentage of extrusions is only a
10 small percentage compared to what they
11 found in the US TVM study.

12 Q. All right. Is this -- I
13 can't remember if I asked you this. Was
14 this paper peer-reviewed?

15 A. Yes.

16 Q. All right.

17 (Exhibit Number 13, Article
18 Titled "Development of de novo
19 prolapse in untreated vaginal
20 compartments after prolapse repair
21 with and without mesh: a
22 secondary analysis of a randomised
23 controlled trial," by Withagen, et
24 al., was marked for

1 identification.)

2 BY MR. TOMASELLI:

3 Q. I've marked as Deposition
4 Exhibit Number 13 a study by Withagen and
5 others.

6 MR. THORNBURGH: Withagen,
7 right?

8 BY MR. TOMASELLI:

9 Q. Withagen? Is that how you
10 say it?

11 A. Yes.

12 Q. Sorry. I apologize to both
13 of you.

14 MR. THORNBURGH: I get it
15 wrong.

16 THE WITNESS: I say
17 Withagen.

18 BY MR. TOMASELLI:

19 Q. Very sorry. I don't mean
20 to --

21 A. No disrespect to Withagen.

22 Q. I don't mean to make this
23 confusing at all to you if I said the
24 name wrong.

1 A. We're not confused.

2 Q. All right. Withdrawn.

3 Dr. Zipper, I've handed you
4 what I've marked as Deposition
5 Exhibit 13, and it's a study by Withagen
6 and others that was published in 2011,
7 correct?

8 A. No. I don't think. I think
9 it was accepted in October of 2011. I
10 don't recall when it was published. I
11 think that's not -- probably not relevant
12 to the discussion.

13 Q. Okay. Well --

14 A. It was published 2012.

15 Q. All right. In paper form,
16 the part I handed you is -- has a 2012
17 copyright on it, okay?

18 A. I believe if you look at the
19 journal date, it's British Journal of
20 Obstetrics and Gynaecology,
21 2012;119:254-360.

22 Q. Dr. Zipper, was this
23 Withagen study a randomized controlled
24 trial comparing Prolift to a native

1 tissue repair?

2 MR. THORNBURGH: Objection.

3 THE WITNESS: Yes. This was
4 in a --

5 MR. THORNBURGH: Go ahead.

6 BY MR. TOMASELLI:

7 Q. Is that just a yes?

8 A. This is an ongoing study
9 started years earlier. There were
10 several other publications on this
11 patient group. And yes, this is a
12 randomized controlled trial which showed
13 a dramatically increased rate of
14 untreated compartment failure compared to
15 native tissue.

16 Q. All right. I didn't ask you
17 anything about untreated compartment
18 failure or anything like that.

19 A. It's the title of the
20 article.

21 Q. Oh, well, then I gave you
22 the wrong one. Fair point.

23 A. This showed almost over
24 50 percent untreated compartment failure

1 rate and which was almost threefold data
2 associated with native tissue repair.

3 Q. All right. Well, since
4 we're on it -- I pulled out the wrong
5 one. I apologize, Doctor. I thought I
6 had the randomized trial. But this is
7 the 2012 paper. It is a randomized
8 trial?

9 A. This is -- they started this
10 study a few years earlier, and they
11 continued to report on this study. They
12 used the same group of patients, I
13 believe, to report on the risk factors
14 for erosion. You probably have that
15 paper as well.

16 Q. Dr. Zipper, this patient --
17 or this paper reports on untreated
18 compartment failure. I don't know if you
19 noticed this or not, but did you notice
20 that if a apical repair was done as well
21 that there was no untreated compartment
22 failure?

23 MR. THORNBURGH: Objection.

24 THE WITNESS: Please let me

1 respond to this in the entirety.

2 I know that's not a question that
3 can be answered just with a yes or
4 no, although you would like it.

5 Yes. Ethicon was acutely
6 aware, and being made aware by
7 Withagen and other thought
8 leaders, that the product was
9 defective at the level of the
10 apex. It had been discussed by
11 Dr. Raders, by Dr. Mendelovici, by
12 Dr. -- I believe Dr. Moricky, I
13 think by Dr. Lucente, that the
14 device was failing at the apex,
15 and the device needed to be
16 modified to protect the apex and
17 prevent recurrence in the
18 untreated apex and even the
19 posterior compartment.

20 And this is validated by
21 Withagen, who points out if you
22 fix this apical problem, this
23 defect in the product, we may not
24 get as much apical failure and

1 untreated compartment failure.
2 (Exhibit Number 14, Article
3 Titled "Trocac-Guided Mesh
4 Compared With Conventional Vaginal
5 Repair in Recurrent Prolapse, a
6 Randomized Controlled Trial," by
7 Withagen, et al., was marked for
8 identification.)

9 BY MR. TOMASELLI:

10 Q. Dr. Zipper, what I've handed
11 you and I've marked as Deposition Exhibit
12 Number 14 is another paper by Withagen.

13 MR. THORNBURGH: Do you have
14 a copy for me?

15 MR. TOMASELLI: Yeah. I
16 handed it right there.

17 THE WITNESS: Yes.

18 BY MR. TOMASELLI:

19 Q. And can you confirm that
20 this is a randomized trial with Prolift
21 compared to native repair that was
22 published in 2011?

23 A. Yes.

24 Q. All right. And was this

1 peer-reviewed?

2 A. Yes.

3 MR. THORNBURGH: Is that the
4 only question about this, about
5 Exhibit 14?

6 MR. TOMASELLI: For now.

7 (Exhibit Number 15, Article
8 Titled "Laparoscopic sacral
9 colpopexy versus total vaginal
10 mesh for vaginal vault prolapse:
11 a randomized trial," by Maher, et
12 al., was marked for
13 identification.)

14 BY MR. TOMASELLI:

15 Q. Doctor, I've handed you what
16 I've marked as Deposition Exhibit
17 Number 15, which is a study by Maher and
18 others.

19 Do you see that?

20 A. Yes.

21 Q. Can you confirm that this is
22 a randomized clinical trial comparing
23 Prolift to native repairs?

24 MR. THORNBURGH: Objection.

1 THE WITNESS: I can confirm
2 that this is a randomized
3 controlled trial, without reading
4 the article, based on my memory,
5 comparing laparoscopic
6 sacrocolpopexy to a total Prolift.

7 BY MR. TOMASELLI:

8 Q. All right. And this was
9 likewise published in 2011, correct?

10 A. Yes.

11 Q. And it's peer-reviewed?

12 A. Yes. This is the one that
13 showed significantly higher efficacy of
14 the laparoscopic sacrocolpopexy compared
15 to Prolift with higher complication rates
16 associated with the Prolift to also show
17 the Prolift to be associated with vaginal
18 shortening, where the sacrocolpopexy
19 wasn't.

20 Are we going to talk about
21 this paper?

22 Q. Can you confirm that this
23 Maher paper that you just told me was --
24 anatomic success was better with

1 laparoscopic than Prolift?

2 A. All success measures were
3 better with laparoscopic compared to
4 Prolift, subjective and objective.

5 Q. Quality of life measures as
6 well?

7 A. I can't remember. It was
8 just several symptoms or quality of life,
9 but certainly it was symptomatic benefit
10 and anatomic benefit that was
11 significantly better with the
12 laparoscopic procedure than the
13 vaginal -- than the total Prolift. Total
14 Prolift was also associated with
15 significant vaginal shortening, whereas
16 the laparoscopic procedure was not.

17 Prolift was associated with
18 approximately -- I'm just going off
19 memory -- 77 -- I think 77 percent
20 efficacy. I believe the total vaginal
21 mesh was -- the Prolift was around
22 43 percent efficacy based upon objective
23 measures.

24 There was subjective benefit

1 of the laparoscopic procedure compared to
2 the total Prolift, and once again,
3 significant vaginal shortening was noted
4 in the total Prolift, yet none was noted
5 in the laparoscopic surgery.

6 There was also more blood
7 loss, longer hospital stay, longer return
8 to normal activity associated with the
9 total vaginal mesh compared to Prolift.

10 Sorry, but, I mean, these
11 studies are all really important studies
12 in peer-reviewed journals that time and
13 time again show that show not only is the
14 Prolift -- Prolift product defective, not
15 as good as alternatives, but just also
16 demonstrates that there's a heightened
17 level of awareness of these defects.

18 Q. Can you turn to Table 5,
19 Doctor, in this paper.

20 A. You'd rather look at the
21 table rather than the overall outcome?

22 Q. Table 5.

23 A. I'm getting there. Table 4.
24 Table 5. Sure.

1 Q. Do you see that it has
2 quality of life outcomes in this paper?

3 A. Yes.

4 Q. Did you previously state to
5 me that there was a significant
6 difference between the groups in terms of
7 quality of life?

8 A. No, sir.

9 MR. THORNBURGH: Objection.

10 THE WITNESS: Absolutely
11 not. Please don't misstate my
12 testimony.

13 BY MR. TOMASELLI:

14 Q. I'm asking. I just asked
15 you. Did you tell me --

16 A. And a minute ago you asked
17 me that, and I said subjective. I said I
18 didn't recall the quality of life
19 statistical analysis. I didn't use the
20 word "statistical." I said I believe
21 that it showed there was a subjective
22 benefit. I didn't testify that there was
23 a quality of life benefit.

24 I'm going to go back through

1 and have -- and look through this to read
2 my testimony.

3 Q. Can you confirm with me
4 right now, looking at Table 5, that there
5 was no significant difference in quality
6 of life between the patients randomized
7 to Prolift and the patients randomized to
8 laparoscopic surgery?

9 A. Joe, I can do better than
10 that. We can look at the Cochran data,
11 the highest level of evidence, and the
12 overall pool of evidence.

13 Prolift and transvaginal
14 mesh has never been shown to provide any
15 benefit in quality of life over
16 traditional surgery, yet it has
17 substantially higher complication rates.
18 That's why we're here today. Never been
19 shown to have any quality of life
20 benefits.

21 MR. THORNBURGH: Are we done
22 with Exhibit 15?

23 MR. TOMASELLI: For now.

24 THE WITNESS: Rhonda, if you

1 need me to go over some of this
2 with you later. I'm sorry.

3 MR. THORNBURGH: She's good.
4 I'm watching her. She's on it.

5 (Exhibit Number 16, Article
6 Titled "Anterior Colporrhaphy
7 versus Transvaginal Mesh for
8 Pelvic-Organ Prolapse," by Altman,
9 et al., was marked for
10 identification.)

11 BY MR. TOMASELLI:

12 Q. Dr. Zipper, I'm handing you
13 what I've marked as Deposition Exhibit
14 Number 16.

15 MR. THORNBURGH: The Altman
16 study?

17 MR. TOMASELLI: Yes.

18 THE WITNESS: This was
19 excluded. There are only two
20 studies I'm aware of that have
21 ever shown any subjective benefit
22 compared to native tissue, Altman
23 and da Silveira.

24 And this is the one where

1 Altman got in a bit of a bind
2 because Altman doesn't disclose
3 his relationship to Ethicon. The
4 New England Journal got involved.
5 Ethicon asked Withagen -- and it's
6 in the internal documents -- to
7 not report -- Ethicon had a right
8 to review this publication and its
9 manuscript before it was
10 published. And Ethicon asked
11 Dr. Withagen to hold back the
12 dyspareunia data, which he did.

13 And I believe this is it.
14 Let me see. Yes. This is that
15 Altman study.

16 BY MR. TOMASELLI:

17 Q. Dr. Zipper, can you confirm
18 that Deposition Exhibit Number 16 is the
19 study by Altman and others reported in
20 the New England Journal in 2011?

21 MR. THORNBURGH: Objection.

22 THE WITNESS: Yes.

23 BY MR. TOMASELLI:

24 Q. Was this study

1 peer-reviewed?

2 A. Yes.

3 Q. Was Deposition Exhibit
4 Number 16 a randomized trial between
5 Prolift and native repair?

6 MR. THORNBURGH: Objection.

7 MR. TOMASELLI: I don't
8 understand the objection to that.

9 THE WITNESS: Remember
10 earlier when we talked about
11 trends versus --

12 MR. THORNBURGH: Doesn't
13 mean it's -- you want to know the
14 objection?

15 MR. TOMASELLI: No, I don't.

16 MR. THORNBURGH: Because you
17 asked me for it, and I'll tell you
18 the objection.

19 MR. TOMASELLI: I said I
20 don't know what it is.

21 MR. THORNBURGH: Well, do
22 you want to know what it is?

23 MR. TOMASELLI: I don't.

24 ///

1 BY MR. TOMASELLI:

2 Q. Dr. Zipper, here's my
3 question to you: Is Exhibit Number 16
4 the Altman study published in the New
5 England Journal in 2011, is that a
6 randomized trial between Prolift and a
7 native repair?

8 MR. THORNBURGH: Objection.

9 THE WITNESS: This is the --
10 I believe this is the randomized
11 trial that showed Prolift to have
12 triple the dyspareunia rate,
13 higher blood loss, higher
14 operative time, performed by
15 unblinded Nordic surgeons, by a
16 surgeon affiliated with Ethicon.
17 And I believe it was randomized.

18 BY MR. TOMASELLI:

19 Q. In terms of the dyspareunia
20 that you just mentioned to me, was that a
21 significant difference between the
22 groups?

23 A. It was a trend, which you
24 are so fond of talking about today.

1 Q. I'm actually not.

2 A. You want -- another study,
3 you wanted to point out all the trends
4 that didn't reach statistical
5 significance, and I warned you about -- I
6 said we were going to do that for
7 everything then.

8 Q. I was actually trying to --
9 just to get an agreement on what
10 statistical significance was.

11 MR. THORNBURGH: Objection.

12 BY MR. TOMASELLI:

13 Q. I don't know how you can --

14 A. You kept on asking me --
15 you're pointing out the trends. These
16 numbers are very different, but they're
17 not statistically significant. Once
18 again, the study shows triple the
19 dyspareunia rate -- approximately triple
20 the dyspareunia rate associated with
21 Prolift compared to native tissue
22 surgery.

23 It did not reach statistical
24 significance.

1 Q. All right. Did not?

2 A. Did not.

3 (Exhibit Number 17,
4 Correction to the Article Titled
5 "Anterior Colporrhaphy versus
6 Transvaginal Mesh for Pelvic-Organ
7 Prolapse," Bates-stamped DEFT
8 2295k.1, was marked for
9 identification.)

10 BY MR. TOMASELLI:

11 Q. Deposition Exhibit Number 17
12 that I'm handing you is a short
13 publication from the New England Journal
14 pertaining to the Altman study; is that
15 correct?

16 A. Yes.

17 Q. Have you reviewed this
18 before?

19 A. Yes.

20 Q. Did this correction in the
21 New England Journal change any of the
22 actual numbers that were reported in the
23 Altman 2011 paper?

24 A. It just changed the meaning

1 of those numbers.

2 Q. But it did not change the
3 actual data?

4 MR. THORNBURGH: Objection.
5 Asked and answered.

6 THE WITNESS: It just
7 changed the meaning of those
8 numbers.

9 (Exhibit Number 18, Article
10 Titled "One-year objection and
11 functional outcomes of a
12 randomized clinical trial of
13 vaginal mesh for prolapse," by
14 Sokol, et al., was marked for
15 identification.)

16 BY MR. TOMASELLI:

17 Q. Doctor, I'm handing you what
18 I've marked as Deposition Exhibit
19 Number 18, and it's a study by --

20 A. This is the follow-up of the
21 Iglesia study.

22 Q. It's a study by Sokol --
23 withdrawn.

24 Dr. Zipper, I'm handing you

1 what I've marked as Deposition Exhibit
2 Number 18, which is a study by Sokol and
3 others published in 2012.

4 Do you see that?

5 A. I believe this is the
6 follow-up on the Iglesia study in the
7 American Journal of Obstetrics and
8 Gynecology, 2012, that showed a 15 or
9 16 percent reoperation rate with the --
10 with a Prolift and a 0 percent
11 reoperation rate for native tissue
12 surgery.

13 Q. Is this a randomized -- is
14 Deposition Exhibit Number 18 a randomized
15 trial between Prolift and native tissue
16 repair?

17 A. It is.

18 Q. Has it been peer-reviewed?

19 A. Yes, it has.

20 (Exhibit Number 19, Article
21 Titled "A Multicenter, randomized,
22 prospective, controlled study
23 comparing sacrospinous fixation
24 and transvaginal mesh in the

1 treatment of posthysterectomy
2 vaginal vault prolapse," by
3 Halaska, et al., Bates-stamped
4 DX30554-R.1 - DX30554-R.7, was
5 marked for identification.)

6 BY MR. TOMASELLI:

7 Q. Doctor, I'm handing you what
8 I've marked as Deposition Exhibit
9 Number 19.

10 A. Joe, can I take ten seconds
11 to answer a text?

12 MR. TOMASELLI: No problem.
13 Why don't we go off the record.

14 THE WITNESS: Thanks.
15 (Off the record from
16 12:34 p.m. to 12:34 p.m.)

17 MR. TOMASELLI: Back on.

18 BY MR. TOMASELLI:

19 Q. Dr. Zipper, are you ready to
20 go back on the record?

21 A. Indeed. Yes.

22 Q. Okay. Great. I've just
23 handed you Deposition Exhibit Number 19,
24 which is --

1 MR. THORNBURGH: It's the
2 same thing? I think I got it
3 twice for some reason. Did you
4 mean to do that? Do I have your
5 notes maybe?

6 MR. TOMASELLI: If you don't
7 want it, you can hand it back.
8 Withdrawn.

9 BY MR. TOMASELLI:

10 Q. Dr. Zipper, I've handed you
11 Deposition Exhibit Number 19, which is a
12 paper that was published by Halaska and
13 colleagues in 2012, I believe; is that
14 correct?

15 A. Yes.

16 Q. Is this also a randomized
17 trial between Prolift and a native
18 repair?

19 MR. THORNBURGH: Objection.

20 THE WITNESS: Yes.

21 BY MR. TOMASELLI:

22 Q. Has it been peer-reviewed,
23 sir?

24 A. Yes.

1 (Exhibit Number 20, Article
2 Titled "Anterior colporrhaphy
3 versus repair with mesh for
4 anterior vaginal wall prolapse: a
5 comparative clinical study," by
6 El-Nazer, et al., was marked for
7 identification.)

8 BY MR. TOMASELLI:

9 Q. Doctor, I'm handing you what
10 I've marked as Deposition Exhibit
11 Number 20, which is a paper by El-Nazer,
12 E-L, dash, N-A-Z-E-R, published in 2012.

13 Do you see that?

14 A. Yes.

15 Q. Are you familiar with this
16 paper?

17 A. I am. It's been a while
18 since I read this one, so I'm just trying
19 to quickly refresh my mind on it.

20 Q. Fine. Can you just confirm
21 with me that is a randomized trial with
22 one group having native repair while the
23 other group received mesh called Gynemesh
24 PS?

1 A. It'll take me just a moment.

2 Q. Sure.

3 A. This one is a little further
4 down between my permanent
5 between-the-ears database.

6 (Reviewing document.)

7 Q. While you're reviewing that,
8 Doctor, my question was, simply, can you
9 confirm that it's a randomized trial?

10 A. I don't like to stop at the
11 word "methods" because sometimes when I
12 read further, I realize it wasn't truly
13 randomized even though it was the intent
14 of the study. So that's -- because most
15 of these studies, I've covered just
16 recently in my preparation for this
17 deposition. This one is an older study
18 that is -- I have read, but it's been a
19 long time. So I just want to quickly
20 look at it again.

21 Q. All right. I apologize for
22 interrupting you.

23 A. No, that's okay, sir.

24 (Reviewing document.)

1 Yes, it was a randomized
2 controlled study.

3 Q. All right. Was it
4 peer-reviewed, sir?

5 A. I'm not familiar with Arch
6 Gynecology Obstetrics. I don't know if
7 it's a peer-reviewed journal.

8 Q. Any reason to believe it's
9 not?

10 MR. THORNBURGH: Objection.

11 THE WITNESS: No reason
12 either way. Could be -- no reason
13 to believe it is.

14 BY MR. TOMASELLI:

15 Q. Okay.

16 A. If you represent that it is,
17 I can accept that for today.

18 MR. THORNBURGH: Just for
19 the record, the journal address is
20 in Dubai.

21 THE WITNESS: They may have
22 a peer-reviewed journal.

23 MR. THORNBURGH: I'm not
24 saying it's not. Just for the

1 record, it's Dubai.

2 MR. TOMASELLI: Thanks, Dan.

3 THE WITNESS: They have
4 excellent shawarma in Dubai.

5 (Exhibit Number 21, Article
6 Titled "Three-Year Outcomes of
7 Vaginal Mesh for Prolapse, A
8 Randomized Controlled Trial," by
9 Gutman, et al., was marked for
10 identification.)

11 BY MR. TOMASELLI:

12 Q. Dr. Zipper, I'm handing you
13 what I've marked as Deposition Exhibit
14 Number 21, sir, and this is a study that
15 was published by Gutman and others.

16 Do you see that, sir?

17 A. Yes.

18 Q. Can you confirm that this is
19 a randomized trial comparing Prolift to
20 native repair? In fact, it's an update
21 from the Iglesia paper. True?

22 MR. THORNBURGH: Objection.

23 THE WITNESS: No, I can't
24 confirm that yet. I'll have to

1 look at it.

2 BY MR. TOMASELLI:

3 Q. Okay. Please do.

4 A. (Reviewing document.)

5 Yes. This thing's also a
6 bit more fuzzy in my mind. But my
7 recollection of this study is that it is
8 a randomized -- it is a continuation of
9 the Iglesia study, which confirmed that
10 there was absolutely no benefit from the
11 Prolift over native tissue surgery.

12 Q. All right. My question to
13 you, Dr. Zipper, is: Is this paper,
14 published in 2013 by Gutman and others, a
15 randomized comparison between Prolift and
16 a native tissue repair?

17 A. This --

18 MR. THORNBURGH: Objection.

19 THE WITNESS: -- three-year
20 follow-up on the Iglesia and Sokol
21 study, which shows absolutely no
22 significant benefit of Prolift
23 over native tissue surgery appears
24 to be in a randomized -- a

1 continuation of the randomized
2 control trial published in a
3 peer-review journal.

4 BY MR. TOMASELLI:

5 Q. So you can confirm that
6 Gutman 2013 is peer-reviewed?

7 A. The Journal of Obstetrics &
8 Gynecology is a peer-reviewed journal.

9 I ordered Chinese for
10 everyone. It should be here pretty soon.

11 Q. Seriously?

12 A. No, not seriously. Sorry.
13 That was cruel. Actually, if you knew
14 how bad the Chinese was in Melbourne,
15 you'd be happy I didn't.

16 Q. Fair enough.

17 (Exhibit Number 22, Article
18 Titled "Transvaginal cystocele
19 repair using tension-free
20 polypropylene mesh at the time of
21 sacrospinous colpopexy for
22 advanced uterovaginal prolapse: a
23 prospective randomised study," by
24 Qatawneh, et al., was marked for

1 identification.)

2 BY MR. TOMASELLI:

3 Q. Doctor, I'm handing you what
4 I've marked as Deposition Exhibit
5 Number 22, which is a study by Qatawneh
6 and others published in Gynecologic
7 Surgery in 2013.

8 Do you see that?

9 A. 2000 -- oh, you're on --
10 yes. Exhibit Number 22?

11 Q. Yeah. It's published in
12 paper in 2013, published online in 2012,
13 if that's the hesitation you had.

14 A. No, no. I agree.

15 Q. Okay. And can you confirm
16 that this is a randomized comparison of
17 patients undergoing a native surgery
18 versus patients undergoing a mesh surgery
19 with Gynemesh PS?

20 MR. THORNBURGH: Objection.

21 THE WITNESS: I'll need just
22 a moment, and I'll get back to
23 you.

24 ///

1 BY MR. TOMASELLI:

2 Q. Okay.

3 A. (Reviewing document.)

4 Can you restate your
5 question?

6 Q. Sure.

7 Can you confirm that
8 Deposition Exhibit Number 22, the study
9 by Qatawneh and others, published in 2013
10 in paper and 2012 online, is a randomized
11 comparison between native tissue repair
12 and Gynemesh PS?

13 MR. THORNBURGH: Objection.

14 THE WITNESS: No.

15 BY MR. TOMASELLI:

16 Q. Why can you not confirm
17 that?

18 A. Because that's not what it's
19 comparing.

20 Q. What is it comparing?

21 A. This is a study comparing
22 the use of Gynemesh PS combined with
23 sacrospinous ligament fixation, so a
24 combination of native tissue surgery and

1 mesh with Gynemesh PS, to native
2 tissue -- the same native tissue surgery,
3 the same sacrospinous colpopexy with
4 native tissue alone. So native tissue
5 with sacrospinous to anterior mesh with
6 Gynemesh to sacrospinous, so it's
7 comparing a combination of native tissue
8 surgery and Gynemesh PS to native tissue
9 surgery alone with that same sacrospinous
10 ligament fixation.

11 And this is -- so that's
12 what it does. That's what it's a
13 comparison of in a randomized controlled
14 trial, and it's a methodology that was
15 never taught in any of the labeling of
16 any of the Ethicon products.

17 Q. Okay. So if I can just
18 understand what you said, Dr. Zipper,
19 this is a randomized comparison where
20 everyone in the trial received
21 sacrospinous ligament fixation, and half
22 the group received a other native repair
23 and the other half of the group received
24 Gynemesh PS?

1 A. Self-tailored Gynemesh PS.

2 Q. Okay. Is that study
3 peer-reviewed, sir?

4 A. I believe it is.

5 (Exhibit Number 23, Article
6 Titled "Comparison of vaginal mesh
7 repair with sacrospinous vaginal
8 colpopexy in the management of
9 vaginal vault prolapse after
10 hysterectomy in patients with
11 levator ani avulsion: a
12 randomized controlled trial," By
13 Svabik, et al., was marked for
14 identification.)

15 BY MR. TOMASELLI:

16 Q. Doctor, I'm going to hand
17 you what I've marked as Deposition
18 Exhibit Number 23. And this is a study
19 by Svabik, S-V-A-B-I-K, and others,
20 published in 2014.

21 Do you see that?

22 A. Yes.

23 Q. Is this a randomized
24 controlled trial comparing native surgery

1 to Prolift?

2 A. My recollection of this
3 trial is that this was a unique trial
4 that the principal investigator felt it
5 was unethical to enroll all patients
6 because of the risks associated with
7 mesh, so he limited it to patients with
8 some unique 3-D and 4-D ultrasound
9 findings. And it is my recollection that
10 it is a randomized controlled trial where
11 they found a massive de novo SUI rate, I
12 think 36 percent with the Prolift versus
13 around 9 percent with native tissue and
14 twice the dyspareunia rate, is my
15 recollection.

16 And I do -- yeah. This is a
17 randomized controlled trial. I do not
18 know offhand if Ultrasound Obstet
19 Gynecology is a peer-reviewed journal.

20 Q. Okay. But we can at least
21 agree that this is a -- that is,
22 Exhibit 23 is a randomized comparison of
23 Prolift and a native tissue repair,
24 correct?

1 A. I don't think that's precise
2 enough. This is a randomized controlled
3 trial of sacrospinous colpopexy to total
4 Prolift, is my recollection, in a unique
5 subset of a patient population considered
6 to be at very high risk for surgical
7 failure secondary to levator ani avulsion
8 as identified by 3-D and 4-D ultrasound.

9 Q. Just so I understand some of
10 the data that you just described in this
11 study, can you turn to page 4?

12 A. Yes.

13 Q. Do you see down in the
14 right-hand column at the bottom a
15 paragraph that starts "Sexual activity"?

16 A. Yes.

17 Q. It says, "Sexual activity
18 was not influenced by the type of
19 surgery. There was no difference in
20 PISQ-12 score between groups both before
21 and after surgery (Tables 1 and 3)."

22 Do you see where I've read?

23 A. Yes.

24 Q. And then it goes on to say,

1 "At the 1-year follow-up there were two
2 patients with dyspareunia in the Prolift
3 group and one in the SSF group."

4 Do you see that?

5 A. I believe that's twice the
6 number of dyspareunia patients. We're
7 talking about trends, as you started
8 doing earlier.

9 Q. I'm just curious, Doctor, if
10 that was the data that you were referring
11 to?

12 A. Yes.

13 Q. Okay.

14 A. And I believe it says
15 36 percent de novo SUI rate compared to a
16 9 percent. So . . .

17 Q. The two versus one that you
18 just pointed me to in terms of
19 dyspareunia, was that statistically
20 significant in your --

21 A. I don't recall.

22 Q. All right. In terms of --
23 can you turn to the next page just so I
24 can understand some of these charts a

1 little better? Do you see a Table 3 on
2 the right-hand page over here?

3 A. Yes.

4 Q. All right. And that talks
5 about the comparison of the results at
6 one year. Do you see that, sir?

7 MR. THORNBURGH: Objection.

8 THE WITNESS: (Reviewing
9 document.)

10 Yes, I see that table.

11 BY MR. TOMASELLI:

12 Q. Okay. And when -- for
13 example, if you go down in Table 3 where
14 it says "Parameter," about six lines
15 down, do you see where it says "total
16 vaginal length"?

17 A. Yes.

18 Q. All right. This one
19 actually says "total vaginal length," and
20 other studies there's a report of TVL.
21 Would that be the same thing?

22 A. Yes.

23 Q. Okay. And I know you stated
24 that there was a difference in total

1 vaginal length in the Maher study. Was
2 there a difference in total vaginal
3 length in this study?

4 A. This study doesn't look like
5 it's reporting the delta, which is the
6 change. So if we don't know what the
7 beginning vaginal length is versus the --
8 I'd have to look deeper. Maybe it's in
9 here somewhere. I'm not saying it's not
10 there. But just looking at this chart, I
11 can't draw the same conclusion that you
12 are.

13 Q. Okay. It's up in Table 1.
14 There's preoperative.

15 A. (Reviewing document.)

16 Q. And then Table 3 I think is
17 the postoperative. And my question to
18 you is, was there a difference in total
19 vaginal length between the groups in this
20 study?

21 A. So in this unique subset of
22 patients with 4-D ultrasound evidence of
23 levator ani avulsion, there was not a
24 statistically different significance in

1 vaginal length between sacrospinous
2 ligament fixation and Prolift.

3 Q. Okay. And then you
4 mentioned, I think, in one of your
5 answers the results regarding
6 incontinence at the end of one year.

7 Do you remember that?

8 A. I do.

9 Q. I think Table 2 has those
10 results for incontinence.

11 Do you see that?

12 A. Yes.

13 Q. And was there a
14 statistically significant difference
15 between the groups in terms of
16 incontinence as reported by the authors?

17 A. It was dramatically higher
18 but not reported as statistically
19 significant. And, Joe, earlier today I
20 cautioned you about the use of trends,
21 and you elected to start a conversation
22 on trends as if they were important. And
23 so I point out here the trend.

24 Q. Okay. Well, actually,

1 didn't mean to suggest anything --

2 A. But also --

3 Q. -- in my questions but --

4 A. But we also know from the
5 randomized control data and the Level 1
6 data, nobody's disputing the fact that
7 transvaginal mesh is associated with a
8 significantly higher incidence of de novo
9 stress urinary incontinence.

10 And although this one study
11 may have shown a trend and not
12 statistical significance, when you take
13 all these studies and you combine them in
14 a meta-analysis as Cochran did, we find
15 out that transvaginal mesh is associated
16 with a significantly higher incidence of
17 de novo stress urinary incontinence.

18 (Exhibit Number 24, Article
19 Titled "Multicenter; randomized
20 trial comparing native vaginal
21 tissue repair and synthetic mesh
22 repair for genital prolapse
23 surgical treatment," by
24 da Silveira, et al., was marked

1 for identification.)

2 BY MR. TOMASELLI:

3 Q. I'm going to hand you what
4 I've marked as Deposition Exhibit
5 Number 24, Dr. Zipper, and this is a
6 study by da Silveira, D-A
7 S-I-L-V-E-I-R-A, that was published
8 online and in print in -- sorry.
9 Published online in 2014 and in print in
10 2015.

11 Do you see that, sir?

12 A. Yes.

13 Q. All right. And can you
14 confirm that this is a randomized
15 clinical trial between a native tissue
16 repair and Prolift?

17 A. Yes.

18 Q. And was this peer-reviewed,
19 sir?

20 A. Yes.

21 (Exhibit Number 25, IUGA
22 Resonation Abstract Titled
23 "Long-term Follow-up (7 years) of
24 a Randomized Controlled Trial:

1 Trocar-Guided Mesh Compared With
2 Conventional Vaginal Repair in
3 Recurrent Pelvic Organ Prolapse,"
4 by Damoiseaux, et al., Presented
5 6/11/15, was marked for
6 identification.)

7 BY MR. TOMASELLI:

8 Q. Doctor, I'm going to hand
9 you what I've marked as Deposition
10 Exhibit Number 25, which is a
11 presentation abstract in 2015 from an
12 author, Damoiseaux and others, spelled
13 D-A-M-O-I-S-E-A-U-X.

14 Do you see that?

15 A. Yes.

16 Q. Do you see the title of the
17 presentation is "Long-Term Follow-Up (7
18 Years) of a Randomized Controlled Trial:
19 Trocar-Guided Mesh Compared With
20 Conventional Vaginal Repair and Recurrent
21 Pelvic Organ Prolapse."

22 Do you see that?

23 MR. THORNBURGH: Objection.

24 THE WITNESS: Yes.

1 MR. THORNBURGH: Do you want
2 me to tell you what the objection
3 is?

4 MR. TOMASELLI: The title?
5 Yeah. Sure.

6 MR. THORNBURGH: The --
7 we've gone through a bunch of
8 these peer-reviewed publications
9 where you suggest are
10 peer-reviewed publications, and
11 here we've got an abstract which
12 provides some incomplete
13 information.

14 MR. TOMASELLI: Okay. I
15 just asked the title, if you look
16 back at my question.

17 MR. THORNBURGH: I think the
18 way your question reads and the
19 context of the line of questioning
20 that you've been asking creates a
21 misperception about this document.

22 MR. TOMASELLI: Okay. Well,
23 I -- I think I said it was an
24 abstract, but if I failed to say

1 that it was an abstract, I'm very,
2 very sorry.

3 BY MR. TOMASELLI:

4 Q. Doctor --

5 A. I have a vague recollection
6 of this study, but I would need to review
7 this. As noted, it's an abstract, but I
8 do believe this is an abstract that not
9 only showed that there was no significant
10 benefit of using mesh versus native
11 tissue, but I believe this is the
12 abstract that showed that there's more
13 harm than good and that mesh should not
14 be considered and people should look to
15 avoid mesh surgery.

16 But I'd have to revisit
17 this. It's been a while.

18 Q. Okay. Can you confirm that
19 this abstract is the -- well, let me
20 start this way: Dr. Zipper, can you
21 confirm that Deposition Exhibit Number 25
22 is an abstract reporting the long-term
23 seven-year data of a randomized
24 controlled trial comparing Prolift to a

1 native repair?

2 A. This is what it states. I
3 confirm that.

4 Q. Are you aware of any
5 publication that is a manuscript instead
6 of an abstract related to these results
7 for seven years?

8 A. I am not.

9 Q. And this abstract was
10 apparently presented at the International
11 Urogynecologic Association meeting in
12 2015.

13 Do you see that?

14 A. Yes.

15 Q. Okay. Dr. Zipper, we've
16 been through a variety of randomized
17 comparisons between Prolift or Gynemesh
18 PS and native surgery of one type or the
19 other.

20 Are you aware, sitting here
21 today, of any other randomized
22 comparisons of Prolift compared to native
23 tissue repairs?

24 A. We'd have to go through --

1 Q. Doctor, you have some
2 opinions in your reports regarding the
3 information warnings for Prolift and
4 Prosima. And you say that those are
5 inadequate, correct?

6 MR. THORNBURGH: Objection.

7 THE WITNESS: Yes.

8 BY MR. TOMASELLI:

9 Q. All right. And when do you
10 believe you became an expert in warnings,
11 sir?

12 A. I am -- I represent myself
13 as an industry expert in labels and
14 safety and -- and safety and efficacy
15 analysis and validation. And in the last
16 two years alone, I've been hired at the
17 executive level to create labels,
18 labeling guidelines, safety and efficacy
19 plans for medical devices from companies
20 that had been publicly traded in the past
21 that have multi-million dollar
22 valuations.

23 My expertise in industry
24 standards, including labeling, safety and

1 sought after by fantastic young device
2 companies with very exciting technology
3 at various stages of development.

4 Q. Right. When you say the
5 last couple years, 2013, 2014?

6 A. I've been doing this for way
7 longer than that.

8 Q. Okay. Fair enough.

9 And when do you believe --
10 maybe it's the same answer, but when do
11 you believe you became an expert on what
12 information needs to go into the IFU?
13 Would the same answer apply?

14 A. It's an evolving process,
15 but certainly I've been doing it for
16 others for eight to ten years.

17 Q. Okay.

18 A. Doing it for myself for a
19 little bit less than that, and over the
20 last two years have worked more
21 extensively as a consultant providing
22 this type of guidance and have taken on a
23 role as president and COO of a formerly
24 publicly traded company with a multi --

1 codifications of the standards which have
2 existed forever. And if you have -- if
3 you're familiar with the basic guidelines
4 required to be a good, ethical human
5 being and perform your fiduciary duties
6 to a company, you coincidentally will
7 typically be in alignment with guidance
8 from those various agencies, including
9 the ISO and the FDA, and, in doing those,
10 often be ready to have notified in body
11 state that you meet the CE guidelines or
12 needs, and does.

13 So to answer -- and in
14 final, I've been familiar with the FDA
15 guidelines for many years, but more
16 crystalized to the specific codes and the
17 minutia of it over the last few years.

18 Q. All right. And probably, I
19 guess just to put a time point on that,
20 going to the early 2010s or so?

21 A. I don't know.

22 MR. THORNBURGH: Objection.

23 BY MR. TOMASELLI:

24 Q. All right. When do you

1 believe that you became an expert in the
2 regulatory process --

3 MR. THORNBURGH: Objection.

4 BY MR. TOMASELLI:

5 Q. -- for mesh devices?

6 A. I don't know.

7 Q. Is that something you've
8 been involved with for many years?

9 MR. THORNBURGH: Objection.

10 THE WITNESS: Once again --

11 BY MR. TOMASELLI:

12 Q. I mean, kind of the same
13 answers?

14 A. -- I want to be clear that I
15 represent myself as an industry expert
16 and an industry standard expert, which is
17 not as narrow-scoped as what you're
18 describing, if you're suggesting that a
19 regulator expert is somebody who
20 specifically has expertise in the FDA
21 code. Now --

22 Q. So I didn't -- I didn't mean
23 to suggest one way or the other, I don't
24 think.

1 A. So --

2 Q. What I was -- here's my
3 question.

4 A. I need clarification then.
5 When you say "regulatory," what do you
6 mean?

7 Q. Sure. Here's my questions.
8 You mentioned a lot of FDA regulation in
9 your Prolift report, correct?

10 A. Because a massive portion of
11 the Prolift internal database on the
12 Crivella database involves a very lengthy
13 and bizarre regulatory process where they
14 came to market with a device that was
15 never cleared for the regulatory process.

16 And what's most important to
17 me about that plethora of internal
18 documentation is not some -- not so much
19 the deceptive nature of the interactions
20 between Ethicon and the FDA and how, in
21 doing so, they created misbranding. To a
22 greater extent, it's the -- it is a
23 black-and-white, written acknowledgment
24 about what Ethicon knew about their

1 product in their interactions with the
2 FDA. They're admitting everything they
3 know about their product, including a lot
4 of misleading statements.

5 And admitting all that has
6 nothing to do with the FDA. They're
7 demonstrating that they have violated the
8 standards, worldwide standards, of
9 labeling, safety and efficacy that have
10 nothing to do with the FDA codes.

11 Q. And when did you become --
12 or when do you believe you became an
13 expert in that regulatory process that
14 you just described?

15 MR. THORNBURGH: Objection.

16 THE WITNESS: Which process
17 are you talking about?

18 BY MR. TOMASELLI:

19 Q. Well, you mentioned a
20 regulatory process regarding the
21 interactions with the FDA. And so I'm
22 wondering when you became an expert in
23 that.

24 MR. THORNBURGH: Objection.

1 THE WITNESS: You'd have to
2 ask the people that hired me when
3 they feel I became an expert.

4 BY MR. TOMASELLI:

5 Q. Okay. And can you take me
6 back and just give me a time frame of
7 when you've been hired to do that?

8 A. I've worked with device
9 companies that overlapped labeling where
10 I was challenged with editing and making
11 labeling suggestions for many years,
12 dating back to probably the mid-2000s.

13 Then I was required to
14 create regulatory-pathway opinions for my
15 own companies since probably 2010ish, and
16 over the last few years for other
17 people's companies.

18 Q. Okay. I do want to mark, as
19 I mentioned you to you earlier, some data
20 regarding Prosima. Do you want to take a
21 quick break, and maybe it'll make it
22 quicker.

23 MR. THORNBURGH: How much
24 time is left?

1 the previous mesh surgery and
2 related complications.

3 BY MR. TOMASELLI:

4 Q. All right. You stated that
5 you use a Y-mesh called Alyte, correct?

6 A. I -- that may not be the
7 pronunciation, but yes.

8 Q. It is Alyte Y?

9 A. It's -- yes, it's either
10 Alyte or Alyte, yes.

11 Q. All right. And this is
12 manufactured and sold by a company called
13 Bard, correct?

14 A. Yes.

15 Q. Is it made of polypropylene?

16 A. Yes.

17 Q. Have you seen -- withdrawn.

18 Is it a macroporous
19 lightweight mesh?

20 A. It is a --

21 MR. THORNBURGH: Objection.

22 THE WITNESS: -- large-pore
23 lightweight mesh.

24 ///

1 BY MR. TOMASELLI:

2 Q. And do you know the weight
3 in grams per meters squared?

4 MR. THORNBURGH: Objection.

5 THE WITNESS: My
6 recollection is that it is in
7 the -- it's -- I'm not comfortable
8 giving you an exact number, but
9 it's my recollection it's either
10 in the -- it's in the low 20s or
11 less.

12 BY MR. TOMASELLI:

13 Q. Do you know the pore size in
14 millimeters?

15 A. It -- I believe the weight
16 and the pore size varies between the arms
17 and the sacral arm of the mesh. Let's be
18 clear that the material defects
19 associated with polypropylene mesh,
20 although they continue to exist in the
21 use for sacrocolpopexy, the consequences
22 are dramatically different and much less
23 severe secondary to the fixation points
24 and the dissection required to place the

1 material.

2 Q. Do you know the pore size of
3 Alyte Y in millimeters?

4 A. I can't give you the exact
5 number today. It is something I have
6 been familiar with in the past and can
7 easily be familiar with again.

8 Q. When did you start using
9 Alyte Y-Mesh in ASC repair?

10 A. I don't recall.

11 Q. Do you know how it was
12 cleared or approved by the FDA, if at
13 all?

14 MR. THORNBURGH: Objection.

15 THE WITNESS: It is cleared.

16 I don't remember what the exact
17 nomenclature of the indication is.

18 BY MR. TOMASELLI:

19 Q. Do you know when it was
20 cleared by the FDA?

21 A. I do not.

22 Q. Do you know if there were
23 any long-term randomized clinical trials
24 at the time of clearance by the FDA?

1 MR. THORNBURGH: Objection.

2 THE WITNESS: What would you
3 consider long-term?

4 BY MR. TOMASELLI:

5 Q. Let me modify the question.

6 Are you aware of any
7 randomized clinical trials with
8 Alyte Y-Mesh at the time of approval or
9 at the time of clearance by the FDA?

10 A. I'm mostly aware --

11 MR. THORNBURGH: Objection.

12 THE WITNESS: -- of the fact
13 that there is an extended database
14 of the safety and efficacy of
15 abdominal sacrocolpopexy as well
16 as the relevant complications
17 associated with abdominal
18 sacrocolpopexy, and there is no
19 particular large-pore, lightweight
20 mesh that I believe is superior or
21 inferior when it comes to the
22 treatment of abdominal
23 sacrocolpopexy.

24 And although the material is

1 effective and has significant
2 complications, the risk/benefit
3 ratio supports the use of
4 lightweight, large-pore
5 polypropylene mesh in the
6 treatment of significant pelvic
7 organ prolapse until such a time
8 that a safer, more effective
9 alternative is available.

10 BY MR. TOMASELLI:

11 Q. Is Gynemesh PS included in
12 your last answer?

13 MR. THORNBURGH: Objection.

14 THE WITNESS: The material
15 defects -- actually, the answer is
16 no.

17 BY MR. TOMASELLI:

18 Q. Okay.

19 A. Because -- I'd like to
20 finish that. Gynemesh PS is perhaps the
21 only mesh I'm aware of that has been
22 shown to be uniquely -- have a uniquely
23 negative impact on tissue. Gynemesh PS
24 has been shown to actually eat away

1 tissue, to be catabolic to tissue. It
2 has been shown to dramatically decrease
3 collagen, dramatically decrease elastin.
4 It has been shown to cause an 80 percent
5 decrease in the contraction of the vagina
6 when used in sacrocolpopexy.

7 So it is the one mesh,
8 Gynemesh PS, that has been shown to be
9 inferior to other meshes it's been
10 compared to and dangerous in comparison.
11 So I disagree with your statement.

12 Q. I just want this particular
13 question: Are you aware of any
14 randomized clinical trial with
15 Alyte Y-Mesh at the time of clearance or
16 approval by the FDA?

17 A. I have not reviewed their
18 regulatory dossier.

19 Q. Are you aware of any
20 prospective clinical data performed on
21 Alyte Y-Mesh prior to the FDA clearance
22 or approval?

23 MR. THORNBURGH: Objection.

24 THE WITNESS: Can you please

1 restate the question.

2 BY MR. TOMASELLI:

3 Q. Sure.

4 Are you aware of any
5 prospective clinical data performed on
6 Alyte Y-Mesh prior to the clearance or
7 approval of the product?

8 A. As stated just a few moments
9 ago --

10 Q. I'm just asking if you're
11 aware.

12 A. And I'm just giving -- to
13 answer that with a yes-or-no question
14 would be an incomplete answer, and I'm
15 not comfortable giving incomplete
16 answers.

17 Q. You can say no, and then
18 "This is why it doesn't matter," or --

19 A. Are you instructing me on
20 how to answer the question, sir?

21 Q. I'm not.

22 A. You just did. I don't want
23 to be argumentative.

24 Q. I'm not try to argue with

1 you. I'm really not. I just have
2 limited time, and so I just need to know
3 whether you're aware of --

4 THE WITNESS: Well, can we
5 extend his time by the three
6 minutes it takes me to answer his
7 question?

8 MR. THORNBURGH: Answer his
9 question. How much time is left
10 on the cross?

11 MR. TOMASELLI: 17 minutes.

12 MR. THORNBURGH: Answer the
13 question the best way you have to
14 answer the question.

15 THE WITNESS: Two wrongs
16 don't make a right, and just
17 because somebody got away with
18 something -- but the bottom line
19 is, before all this happened, we
20 trusted device companies to
21 provide us with adequate
22 information. We believed that
23 device companies did the necessary
24 safety and efficacy testing.

1 By the time that this became
2 an issue, I already had a history
3 of using the product safely. And
4 as stated earlier, the use of
5 polypropylene mesh for abdominal
6 sacrocolpopexy, with the exception
7 of Gynemesh PS, has a history that
8 demonstrates that the risk/benefit
9 analysis is meritorious compared
10 to other alternatives; and,
11 therefore, although companies may
12 not have done the randomized
13 controlled trials that they should
14 have done, the experiment has
15 happened in realtime, and it's
16 provided the necessary realtime
17 data.

18 BY MR. TOMASELLI:

19 Q. Dr. Zipper, do you have or
20 have you reviewed the regulatory file
21 with the FDA and the correspondence
22 between Bard and the FDA regarding the
23 Alyte Y-Mesh?

24 A. I have not.

1 Q. Do you have internal memos
2 from Bard regarding the Alyte Y-Mesh?

3 A. I do not.

4 Q. Do you have any internal
5 e-mails from Bard regarding the Alyte
6 Y-Mesh?

7 A. No. In all fairness, I
8 would not look at those unless I was
9 retained as an expert to render an
10 opinion on that.

11 Q. Have you -- have you asked
12 Bard for their regulatory file, internal
13 memos, or internal e-mails related to the
14 Alyte Y-Mesh?

15 A. I have not.

16 Q. Have you asked Bard for any
17 of their risk assessments that have been
18 performed, if any, internally regarding
19 the Alyte Y-Mesh?

20 A. I have not.

21 Q. Have you seen the material
22 safety data sheet for the Alyte Y-Mesh,
23 if there is one?

24 MR. THORNBURGH: Objection.

1 REPORTER'S CERTIFICATE

2
3 STATE OF FLORIDA

4 COUNTY OF BREVARD

5
6 I, Rhonda Hall-Breuwet, RDR,
7 CRR, LCR, FPR, CLR, NCRA Realtime Systems
8 Administrator, Notary Public, certify
9 that I was authorized to and did
10 stenographically report the deposition of
11 RALPH ZIPPER, MD, FACOG, FPMRS.

12 I further certify that I am
13 not a relative, employee, attorney, or
14 counsel of any of the parties, nor am I a
15 relative or employee of any of the
16 parties' attorney or counsel connected
17 with the action, nor am I financially
18 interested in the action.

19 Dated this 4th day of
20 April, 2016.

21
22 _____
23 Rhonda Hall-Breuwet, RDR, CRR, LCR, FPR, CLR,
24 NCRA Realtime Systems Administrator